

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ROY HARVEL,

Plaintiff,

v.

Case No. 18-C-597

GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

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**ORDER**

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Plaintiff Roy Harvel filed this action in Wisconsin state court asserting a breach of contract claim against Defendant Guardian Life Insurance Company of America for its failure to pay Plaintiff the benefits of an insurance policy pursuant to its policy coverage. Defendant removed the action to this court, alleging Plaintiff's claims are preempted by the Employee Retirement Income Security Act of 1974 (ERISA). Defendant filed a motion for summary judgment on October 31, 2018. Plaintiff did not file a response to the motion. On December 7, 2018, the court ordered Plaintiff to show cause as to why he did not respond to the motion and advised that the action may be dismissed with prejudice for failure to prosecute if he failed to file a timely response. To date, Plaintiff has not responded to Defendant's motion or the court's order and has not requested an extension of time to do so.

The local rules of this district provide that the failure to file a brief in opposition to a motion is sufficient grounds to grant the motion. Civil L.R. 7(d) (E.D. Wis.). Plaintiff has failed to respond to the motion or explain why he has been prevented from doing so. This alone is grounds to grant

the motion. For this reason, and also because it is clear Defendant is entitled to judgment as a matter of law, Defendant's motion for summary judgment will be granted.

Plaintiff maintains that Defendant improperly denied his application for long-term disability benefits. Plaintiff ceased working after he underwent a total arthroplasty of the left hip on January 13, 2016, as a result of left hip pain and dysfunction that was diagnosed as avascular necrosis. He filed a claim for long-term disability benefits on March 29, 2016. Defendant denied Plaintiff's claim, reasoning that Plaintiff's allegedly disabling condition was excluded as a pre-existing condition because he had been treated for those symptoms related to his diagnosis two years prior to May 1, 2015, the date his coverage became effective. Defendant's determination is consistent with the terms of the policy, is well supported, and is not arbitrary and capricious. In short, the motion for summary judgment (ECF No. 17) is **GRANTED** and the case is **DISMISSED**. The Clerk is directed to enter judgment forthwith.

**SO ORDERED** this 3rd day of January, 2019.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court